THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 21st August, 2006

W.P.Nos.23337, 23503, 22821, 22823 to 22828, 23475, 23509, 23664, 23741, 23853, 24367 and 24944 of 2004

W.P.No.23337 of 2004

Between:

M. Saraswathi … Petitioner

and

The Govt.of A.P., rep. by its
Secretary, Civil Supplies,
Secretariat Buildings,
Hyderabad and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.23337, 23503, 22821, 22823 to 22828, 23475, 23509, 23664, 23741, 23853, 24367 and 24944 of 2004

COMMON ORDER:

In all these Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

These cases have got chequered history. It seems, the petitioners belong to various categories and they have been granted authorizations to run fair price shops in the city of Hyderabad. The appointment of the fair price shop dealers was governed by the guidelines issued in G.O.Ms.No.1088, Food and Agriculture (CS.V) Department, dated 28-9-1973 issued by the State Government under the Control Orders of 1973. Thereafter, the said guidelines were amended by G.O.Ms.No.120, dated 27-2-1988 and further amended by G.O.Ms.No.300, dated 5-5-1989 and also G.O.Ms.No.889, dated 31-10-1989. G.O.Ms.No.120, dated 27-2-1988 was the subject matter of Writ Petition No.215 of 1989 and batch before this Court and the other two Governmental Orders were the subject matter of Writ Petition No.8671 of 1989 and batch. While quashing G.O.Ms.No.120, dated 27-2-1988 this Court by an Order dated 27-10-1989 directed that the position as it was prior to the amendment shall be maintained. While quashing G.O.Ms.No.300, dated 5-5-1989 and G.O.Ms.No.889, dated 31-10-1989 it was directed that the authorizations, which were subsisting as on the date of the

Judgment in W.P.No.8671 of 1989 and batch i.e. 6-12-1989 shall be treated as temporary authorizations till regular appointments were made. Pursuant to the said Judgments, the State Government amended the Control Orders,1973 by issuing G.O.Ms.No.19, Food and Agriculture (CS.II) Department, dated 8-1-1990 with retrospective effect from 27-2-1988 i.e. the date on which G.O.Ms.No.120, dated 27-2-1988 was issued restoring Clauses 3,17 and 18 of the Control Order,1973 as they existed prior to 27-2-1988. Pursuant to the directions of the State Government, the respective Revenue Divisional Officer/Sub-Collectors issued notifications calling for applications for appointment as fair price shop dealers on regular basis. Questioning G.O.Ms.No.19, dated 8-1-1990 and the consequential notifications issued inviting applications for appointment as fair price shop dealers on regular basis, Writ Petition No.6407 of 1990 and batch were filed and a Division Bench of this Court, by an Order dated 12-10-1990, upheld the validity of the said G.O.Ms.No.19, dated 8-1-1990 and the consequential notifications issued by the respective Revenue Divisional Officers/Sub-Collectors. Therefore, the present notifications have been issued for filling up the said vacancies on regular basis. Challenging the same, these Writ Petitions have been filed.

Heard both sides.

It is unfortunate that for about 15 years there was a lull and the petitioners herein have been continuing as fair price shop dealers on temporary basis. After fifteen (15) years, the present notifications have been issued. However, the contention of the petitioners that they are entitled to continue as such, treating their appointment as permanent appointment cannot be accepted, since a Division Bench of this Court in Writ Petition No.8671 of 1989 and batch has already made clear that the authorizations, which were subsisting as on the date of Judgment,

i.e. 6-12-1989 shall be treated as temporary authorizations. But, since there is a delay of about 15 years in inviting applications by way of present notifications, it is the apprehension of the petitioners that they would not be able to compete with the freshers for two reasons; firstly, they are age barred and secondly they will not be able to satisfy the condition of educational qualification prescribed under the impugned notifications.

Under the present notifications, one of the eligibility criteria is that the applicant should be in the age group of 18 to 40 years. Most of the petitioners have been holding the authorizations for the last more than 15 years. In view of this, if the petitioners are not permitted to participate in the present selection process, it would prejudice their interest. Since the petitioners have been running the fair price shops from a considerable time and in the earlier Writ Petitions, this Court held that their appointments shall be treated as temporary, while applying for the present notifications, it must be deemed that they are within the age limit as on the date of their first appointment. The impugned notifications do not reveal as to such a concession has been given to the petitioners. While admitting the Writ Petitions, this Court granted interim orders to the effect that pending further orders, the selection process may go on and the petitioners shall also be entitled to apply and the qualifications as to age and education shall be treated as having been fulfilled by the petitioners for the purpose of consideration of their cases, subject to other qualifications and the selections, if any, take place shall be subject to further orders that may be passed. Since there was no stay of appointments during the pendency of the Writ Petitions, the candidature of the petitioners, as directed by this Court in the interim orders were considered and some of them have been provisionally selected as fair price shop dealers by

an Order dated 23-12-2004 of the Chief Rationing Officer, Hyderabad. However, the said orders were withheld by issuing an Errata to the said notice on 27-12-2004. It appears that this was done construing that there is a stay of selection process itself. In fact, there was no stay order passed by this Court. This Court simply stated that the selections, if any, held will be subject to the result of further orders.

However, learned Government Pleader appearing for the respondents strenuously contended that as on the date of notifications, the petitioners do not satisfy the age criterion. Therefore, even if they are selected in view of the interim orders, they cannot be appointed as fair price shop dealers under the impugned notifications.

The chronology of events would indicate that in view of some wrong procedure adopted by the authorities, the matter was carried by way of various Writ Petitions and this Court while quashing the amendments, directed that the appointments of the petitioners shall be treated as temporary one till regular appointments are made. In the meanwhile, 15 years have been elapsed and G.O.Ms.No.19, dated 8-1-1990 itself was applied with retrospective effect from 27-2-1988. Petitioners were appointed long long ago and may be in view of the Judgment of this Court their appointments were treated as temporary one, but when they need to be applied for grant of authorization of fair price shop dealership on regular basis under the impugned notifications, they are entitled for being considered, if they satisfy the age and educational qualifications criteria as on the date of their first appointment. Therefore, it would not be fair on the part of the respondents to say that the petitioners are not entitled for age relaxation under the present notifications. In fact, the long experience of the petitioners as fair price shop dealers would be useful for the Department for the smooth running of fair price shops.

Further, no fault can be attributed to the petitioners for not being appointed on permanent basis earlier. It was only due to the various illegalities committed by the authorities, their appointments were treated as temporary one. Under these circumstances, it is not only reasonable, but also desirable that the age and educational qualifications as held by the petitioners as on the date of their first appointment is taken into consideration and if they satisfy the guidelines existing then, nothing should come in the way of the authorities in considering their candidature. Further, as stated above, G.O.Ms.No.19, dated 8-1-1990 itself contemplates that it has got retrospective effect from 27-2-1988 i.e. the date on which G.O.Ms.No.120, dated 27-2-1988 was issued.

In view of the above, I am of the opinion that since the petitioners are running the fair price shops for the last more than one and half decade, their candidature needs to be considered taking the age and qualification criteria as on the date of their first appointment. Therefore, the respondents are directed to consider the cases of such petitioners, who are provisionally selected on 23-12-2004, if they satisfy the criteria of age and educational qualification as on the date of their first appointment as fair price shop dealers and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

The Writ Petitions are allowed to the extent indicated above. No order as to costs.

21-8-2006

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